

AMENDED IN SENATE SEPTEMBER 8, 2003
AMENDED IN SENATE SEPTEMBER 4, 2003
AMENDED IN SENATE AUGUST 19, 2003
AMENDED IN SENATE AUGUST 18, 2003
AMENDED IN SENATE JULY 17, 2003
AMENDED IN SENATE JUNE 10, 2003
AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1051

Introduced by Assembly Member Goldberg
(Principal coauthor: Senator Torlakson)

February 20, 2003

An act to amend Section 54999.1 of, ~~and to add Sections 54999.7 and 54999.8 to~~ *to add Section 54999.7 to, and to add and repeal Section 54999.8 of*, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1051, as amended, Goldberg. Capital facilities fees.

Existing law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory

charge to pay the capital cost of a public utility facility, and defines the term “nondiscriminatory” for these purposes.

This bill would revise the definition of the term “public utility service.” It would revise the definition of the term “capital facilities fee” to mean a nondiscriminatory connection fee, as defined, or a nondiscriminatory capacity charge, as defined, or both. The bill would, except with respect to the imposition of a capital facilities fee on a school district, county office of education, community college district, the California State University, the University of California, or state agency, require a public agency that provides public utility service to only charge a public agency rates, charges, surcharges, or fees that are determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users. It would, *until January 1, 2007*, require any judicial action or proceeding by a public agency that seeks a refund, or challenges the validity, of a fee, rate, charge, or surcharge, or increase, or any action by a public agency to validate an ordinance, resolution, or motion imposing or increasing any of these, to be commenced as specified.

The bill would make specified declarations with respect to its provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 54999.1 of the Government Code is
- 2 amended to read:
- 3 54999.1. For purposes of this chapter:
- 4 (a) “Actual construction costs” includes the cost of all
- 5 activities necessary or incidental to the construction of a public
- 6 utility facility, such as financing, planning, designing, acquisition
- 7 of property or interests in property, construction, reconstruction,
- 8 and rehabilitation.
- 9 (b) “Capacity charge” means a one-time charge to recover the
- 10 costs of public utility facilities necessary to establish new or
- 11 expand existing public utility service to a public agency.
- 12 (c) (1) “Capital facilities fee” means a nondiscriminatory
- 13 connection fee, a nondiscriminatory capacity charge, or both.
- 14 “Capital facilities fee” does not include any other rate, charge, or
- 15 surcharge, or any capital component thereof.



(2) For purposes of this subdivision, “nondiscriminatory” means that the fee does not exceed an amount determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, and is not in excess of the proportionate share of the cost of the public utility facilities of benefit to the person or property being charged, based upon the proportionate share of use of those facilities.

(d) “Connection fee” means a fee to recover the costs of the physical facilities necessary to directly connect a public agency facility to a public utility service provided by a public agency, including, but not limited to, meters, meter boxes, and pipelines to make the connection, and the actual cost of labor and materials for the installation of those facilities.

(e) “Public agency” means the United States or any of its agencies, the state or any of its agencies, the California State University, the Regents of the University of California, a county, a county office of education, a city, a school district, community college district, or any other district, a public authority, or any other political subdivision or public corporation of this state.

(f) “Public utility facility” means a facility for the provision of water, light, heat, communications, power, or garbage service, for flood control, drainage or sanitary purposes, or for sewage collection, treatment, or disposal.

(g) “Public utility service” means service for water, light, heat, communications, power, or garbage, or for flood control, drainage or sanitary purposes, or sewage collection, treatment, or disposal, provided by a public agency.

(h) “State agency” or “state” means any state office, department, division, bureau, board, or commission.

SEC. 2. Section 54999.7 is added to the Government Code, to read:

54999.7. (a) Except as provided in Section 54999.3, a public agency that provides public utility service may only charge a public agency rates, charges, surcharges, or fees that are determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users.

(b) In addition to other notices required pursuant to state law or local ordinance or rule, whenever a public agency that provides public utility service holds a public meeting to establish or increase any rate, charge, surcharge, or fee, that public agency shall provide

1 a written notice of the meeting not less than 60 days prior to the
2 date of the public meeting to any public agency that has filed a
3 written request for such a notice with either the clerk of the
4 governing body or with any other person designated by the
5 governing body to receive these requests.

6 (c) Upon request of any affected public agency made not less
7 than 30 days prior to the date of the public meeting to establish or
8 increase any rate, charge, surcharge, or fee, a public agency that
9 provides public utility service shall meet with the affected public
10 agency to disclose, describe, and discuss the data and methodology
11 for establishing or increasing the rate, charge, surcharge, or fee.

12 SEC. 3. Section 54999.8 is added to the Government Code, to
13 read:

14 54999.8. (a) Any judicial action or proceeding by a public
15 agency that seeks a refund of a fee, rate, charge, or surcharge, or
16 increase in any of those costs, or that challenges the validity of a
17 fee, rate, charge, or surcharge, or increase, imposed on or after
18 January 1, 2004, pursuant to this chapter, shall be commenced
19 within 120 days of the effective date of the imposition of the fee,
20 rate, charge, or surcharge, or increase.

21 (b) Any action by a public agency under this chapter to validate
22 an ordinance, resolution, or motion imposing or increasing a fee,
23 rate, charge, or surcharge shall be in accordance with Chapter 9
24 (commencing with Section 860) of Title 10 of Part 2 of the Code
25 of Civil Procedure. However, no action by a public agency
26 imposing or increasing the fee, rate, charge, or surcharge shall be
27 commenced any earlier than 120 days from the effective date of the
28 imposition of the fee, rate, charge, surcharge, or increase.

29 (c) In any judicial action or proceeding brought pursuant to this
30 section, the public agency imposing or increasing the fee, rate,
31 charge, or surcharge shall have the burden of ~~producing evidence~~
32 *showing* that it was established pursuant to Section 54999.3 or
33 Section 54999.7.

34 (d) *This section shall remain in effect only until January 1,*
35 *2007, and as of that date is repealed, unless a later enacted statute,*
36 *that is enacted before January 1, 2007, deletes or extends that date.*

37 SEC. 4. The amendments made to Section 54999.1 of, and the
38 addition of Sections 54999.7 and 54999.8 to, the Government
39 Code by this act are not intended to affect any litigation involving
40 public utility services provided prior to January 1, 2004, brought

1 prior or subsequent to that date. Nothing in the legislative history
2 of the amendments or additions made by this act should be
3 construed as any indication of the meaning of the law as it existed
4 prior to the effective date of the amendments and additions made
5 by this act.

O

